



THE UNITED STATES PATENT AND TRADEMARK OFFICE

Serial Number:	09/625,774	Examiner:	Shah, Niles R.
Filing Date:	July 26, 2000	Art Unit:	2127
Inventor:	Mark I. Crohn	Docket:	MIC01
Title:	Automating Time Sequenced Tasks		

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Sir:

PRE-APPEAL BRIEF REQUEST FOR REVIEW

Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request. This request is being filed with a Notice of Appeal. An appropriate extension of time to file this request and the Notice of Appeal is submitted herewith.

REMARKS

Claims 2-21 are pending in this Application and all stand rejected under the Final Office Action dated August 5, 2005 (the "Office Action"). Applicant respectfully appeals all the claim rejections specified in the Office Action. Applicant further believes that all of the claims have been improperly rejected for, among other reasons, the omission of essential elements required to establish a *prima facie* rejection in the final Office Action.

Pre-Appeal Request
Page 1
1/5/2006

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All pending claims have been rejected as anticipated under 35 USC 103(a) as being unpatentable over Matoba et. al., U.S. patent number 5,479,343, issued on December 26, 1995 (hereinafter “Matoba”) in view of Miller, U.S. patent number 6,101,481 issued on August 8, 2000 (hereinafter “Miller”). Together, Matoba and Miller may be referred to as the “combined references.” Matoba and Miller are briefly described in Response C, pages 3-5.

Applicant respectfully does not believe that the Patent Office has met its burden of making a *prima facie* case of obviousness with regard to the present invention in view of the combination of Matoba and Miller. Matoba is asserted as the primary reference, with Miller combined because “Matoba does not specifically teach the use of making the component aware of the other components properties.” Office Action, page 3, ¶5. As Applicant understands the Examiner’s argument, Miller is asserted to convert the software invention in Matoba from a ‘hub and spoke’ architecture into an unstructured, modular system that implements the invention of Matoba without further guidance. However, the hub and spoke system actually taught by Matoba is comprised of quite a few highly specialized software routine “spokes” that communicate with a centralized administer “MRP Calculation Control Device” hub. This precisely defined structure leads to a voluminously disclosed process for scheduling production.

The purpose, desirability, or means of changing from a centrally coordinated and administered system to one “allowing each component to know the status and other information about the other component” (Office Action, page 3, ¶5) is unexplained in either Matoba or the Office Action. In other words, while it is asserted that it would be desirable for each of Matoba’s components¹ to know another Matoba component’s

¹ Applicant takes no position on the use of the word “component” to describe the disclosed implementation of Matoba, but will adopt the nomenclature of the Examiner for the sole purpose of clearly addressing the Examiner’s arguments.

properties, methods or events, how this new structure could implement the Matoba invention is left unstated. Further, it is not explained how an instance of each Matoba component could implement the disclosed invention if it could indeed speak to a second instance of itself without the intervention of the MRU -- which is both figuratively and literally taught as the center of Matoba's invention.

Applicant believes that Matoba actually teaches away from 'each component knowing the status and information of each other component' by expressly describing a centrally coordinating "MRP Calculation Control Device." Applicant understands the purpose of Matoba is to coordinate, decide and administer based on the input from many different input sources, each of which is described in great detail by Matoba's specification. Since the burden of specifying the basis for a teaching or suggestion supporting the combination rests with the Patent Office, this first essential element of a *prima facie* case has not been satisfied.

A *prima facie* case also requires that there be a reasonable expectation for success in the combination of Matoba and Miller. Applicant is unable to discern from the specification of Matoba how detaching the spokes from the hub (the device "MRU Calculation Control") and then reattaching the spokes (e.g., the individual monitoring routines) to each other could be architected to alternatively create Matoba's invention. Further, Applicant finds no suggestion in Matoba that the duplication of these highly specialized spokes and interconnecting them can successfully lead to implementing Matoba's invention. The purpose of any intercommunication between single or multiple instances of these specialized spokes is not taught by or apparent from a fair reading on the Matoba disclosure, nor is this peer to peer communication likely to succeed in a

system that repeatedly references hub and spoke communication with a centralized MRU administrator.

As Applicant reads Matoba, its invention is a scheduling system that relies on coordination of disparate inputs, not a system that relies of the individual inputs letting each other know of their status. Applicant believes that having multiple, interconnected, redundant spokes without the centralized administering system of the MRU disclosed by Matoba could create the computer equivalent of anarchy in the Matoba system, which would cost considerable resources to redesign – if it is even possible. Since the burden of specifying a reasonable chance of success rests with the Patent Office, this second essential element of a *prima facie* case is absent.

Finally, the third essential element of a *prima facie* case requires that each and every element of each and every claim is found in the combined references. There are twenty pending claims in the present application, each of which must be completely examined, with particular attention paid to finding each element of the claim in the prior art. Rather than repeat Applicant's arguments that each pending claim is distinct from each other and from the combined references, the committee is referenced to Response C, pages 6-16. As demonstrated in that discussion, the third essential element of a *prima facie* case has not been satisfied for each and every element in each and every pending claim in the present application.

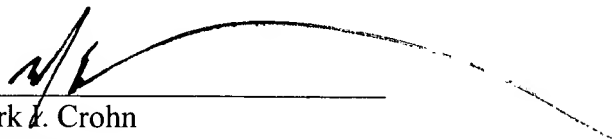
CONCLUSION

As described above, the Office Action fails to make a *prima facie* case that the present invention is unpatentable over Matoba in view of Miller. As required for consideration by the Committee, Applicant believes that all the essential elements required to establish a *prima facie* rejection are not present in the final Office Action. As such, all of Claims 2-21 are allowable and Applicant respectfully requests that this application be passed to issue.

The remarks contained in this document are necessarily constrained by the guidelines of this pilot program. Applicant respectfully reserves the right to completely argue the facts, applicable law and circumstances of this Application in his Appeal Brief or subsequent prosecution.

Dated this 5th day of January, 2006.

Respectfully submitted,

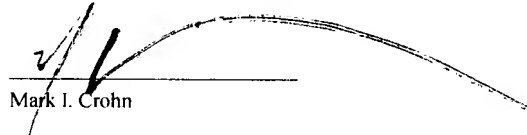


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CERTIFICATE OF MAILING

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Pre-Appeal Request
Page 5
1/5/2006

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